122-284

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 299.

JAMES M. SEIBERT, COLLECTOR OF CAPE GIRARDEAU COUNTY, PLAINTIFF IN ERROR.

vs.

THE UNITED STATES EX REL: JAMES M. LEWIS, ADMINISTRATOR OF THE ESTATE OF ELISHA FOOTE, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED SEPTEMBER 15, 1884.

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INDEX.

	Original.	Print.
Writ of error	1	1
Return to writ	1½	1
Citation	2	2
Proof of service of citation	2½	2
Caption	3	3
Petition for mandamus	3	3
Order for alternative mandamus	7	5
Alternative writ of mandamus	8	6
Marshal's return	13	9
Return to alternative mandamus	13	9
Demurrer to return	21	14
Order sustaining demurrer	22	14
Order for peremptory writ of mandamus	22	14
Order allowing writ of error, &c.	23	15
Bond	24	16
Clerk's certificate	25	17

JUDD & DETWEILER, PRINTERS, WASHINGTON, MAY 2, 1887.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Missouri, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you, at the March term, 1884, thereof, between United States *ex rel.* James M. Lewis, administrator of the estate of Elisha Foote, deceased, relator, and James M. Seibert, collector of Cape Girardeau county, respondent, a manifest error hath happened, to the great damage of the said respondent, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this fourth day of June, in the year of our Lord one thousand eight hundred and eighty-four.

Issued at office, in the city of St. Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

A. P. SELBY,
Clerk Circuit Court United States, Eastern District of Missouri.

Allowed by—
SAMUEL TREAT, *Judge.*

1½ [Endorsed:] No. 1975. United States circuit court, eastern district of Missouri. U. S. *ex rel.* James M. Lewis, adm'r of Elisha Foote, *vs.* James M. Seibert, collector of Cape Girardeau county. Writ of error to the circuit court of the U. S., eastern district of Missouri.

Return to Writ.

UNITED STATES OF AMERICA, *Eastern District of Missouri,* } *ss:*

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said circuit court, at office, in the city of St. Louis, this 4th day of June, A. D. 1884.

A. P. SELBY,
Clerk of said Court.

Returned and filed 4th day of June, 1884.

——— ———, *Clerk.*

2 The United States of America to James M. Lewis, administrator of the estate of Elisha Foote, deceased, relator, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein James M. Seibert, collector of Cape Girardeau county, Missouri, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel Treat, judge of the circuit court of the United States for the eastern district of Missouri, this fourth day of June, in the year of our Lord one thousand eight hundred and eighty-four.

SAMUEL TREAT,
Judge United States District Court, Eastern District of Missouri.

2½ [Endorsed:] No. 1975. United States circuit court, eastern district of Missouri. U. S. *ex rel.* James M. Lewis, adm'r of estate of Elisha Foote, dec'd, *vs.* James M. Seibert, collector of Cape Girardeau county, Missouri. Citation. Filed June 4, 1884. A. P. Selby, clerk.

UNITED STATES OF AMERICA,
Eastern District of Missouri, } *ss:*

I hereby certify that I have served the within writ by delivering a copy thereof to James M. Lewis, administrator of the estate of Elisha Foote, deceased, on June 26th, 1884, in the city of St. Louis, in the above district.

FELIX COSTE,
U. S. Marshal,
By K. H. EWING, *Deputy.*

Fees:

1 service	$2 00
1 mile	06
	$2 06

3 UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

In the Circuit Court of the United States in and for said District.

Be it remembered that on the tenth day of May, A. D. 1884, there was filed in said court a certain petition for mandamus in words and figures following, to wit:

Petition for Mandamus.

In the Circuit Court of the United States for the Eastern District of Missouri. March Term, 1884.

In re JAMES M. LEWIS, Administrator of Elisha Foote, Deceased; Ninth National Bank of New York, John T. Hill, Valentine Winter, and George W. Harshman.

Your petitioners respectfully represent that heretofore, to wit, on the — day of ——, 1883, a peremptory writ of mandamus was issued by this court, commanding the county court of Cape Girardeau county and its judges thereof to make a levy on all the real estate and personal property in Cape Girardeau township subject to taxation, including statements of merchants and manufacturers doing business in said township. Thereupon the county court in compliance thereunto, and in obedience to the command of said writ, on the 23 day of May, A. D. 1883, during a regular term of said county court, made an order and entered the same on the records of said court, whereby it was ordered as follows, to wit: That for the purpose of paying the judgments of Elisha Foote, Ninth National Bank of New York, John T. Hill, Valentine Winter, and George W. Harshman, amounting to $14,288.20, and interest and costs, enforced by peremptory and *alias* peremptory writs of mandamus from the U. S.
4 circuit court for the eastern district of Missouri, and other necessary expense, a tax of two per cent. be, and is hereby, levied on all the real estate and personal property in Cape Girardeau township subject to taxation, including statements of merchants and manufacturers doing business in said township; and the clerk of this court is ordered to extend said tax in a separate column on the tax-books of said county for the year 1883.

Your petitioners further state that in obedience to the provisions of said order the special tax ordered to be levied as aforesaid was by the clerk of said court entered upon and extended in a separate column of the regular tax-books of Cape Girardeau county for the year 1883, and upon the completion of said tax-book the same was delivered in the time and in the manner required by law for the year 1883 to James M. Seibert, collector, who was then and there collector of taxes, duly elected and qualified as such and acting therein for the year 1883, and the said collector then and there was ordered by the county court to proceed and collect the said special tax in the same manner as other taxes, State and county, were authorized to be collected for the said year 1883 in said county.

And your petitioners further represent that after the receipt of said tax-book the said collector was proceeding, as ordered by said county court under and by virtue of said writ of mandamus, to collect said special tax and to return the amount so collected to the treasury of said county, as provided by law in such cases, and while so engaged in the lawful discharge of his duties one Maurice Cramer, county attorney, caused to be presented to the Hon. J. D. Foster, judge of the tenth judicial circuit of the State of Missouri, a petition in the name of the State of Missouri upon relation of said Maurice Cramer, as prosecuting attorney of said county, against Wm. Hager, Samuel Hitt, and Robert Snider, judges of the county
5 court of Cape Girardeau county, and the said John M. Seibert, collector of said county of Cape Girardeau, Missouri, in which said petition it is stated that said county judges had caused to be levied the aforesaid special tax, and that said special tax was not necessary to pay the bonded indebtedness of the State of Missouri, nor was it a tax for current county expenses or for school purposes, and that the said county court, before levying said tax, had not made or caused to be made an application to the circuit court of said county nor to the judge thereof in vacation for an order to have said tax levied and collected, and that neither in said circuit court nor the judges thereof had previously made an order for the collection thereof, and that said county court had assessed and levied said special tax without authority and in violation of the statutes in such cases made and provided.

In said petition it is further stated that in the year 1868 the said county court had caused to be issued $150,000 in bonds under the act of the General Assembly of the State of Missouri, approved March 23, 1868, and that said special tax had been levied to pay off a portion of said debt, and the same had been illegally levied upon all the real and personal property of said township. It is further alleged that the said Seibert is the collector of said *company*, and that he is now threatening to collect said tax so illegally assessed, and threatens to distrain personal property for the purpose of paying said tax, and when this is insufficient to proceed to recover the same by other means, etc. Thereupon it is prayed that an injunction issue restraining the defendants named in said proceeding and their successors in office from collecting or attempting to collect said tax, and on final hearing that said injunction be made perpetual, and other equitable relief is sought therein.

6 Petitioners further say that said petition was presented to said judge, in chambers, at Commerce, in the county of Scott and State aforesaid, on the 29th day of December, 1883, when and where the said judge caused an order to be made restraining the said defendants and each and every of them from collecting or attempting to collect the said special tax of two per cent. so levied by the court of Cape Girardeau county or any other tax levied by the said county court at its May term, 1883, and usually denominated the railroad tax levied upon the tax-payers of Cape Girardeau township aforesaid, until the matters and things stated in said petition can be inquired of by the circuit court of Cape Girardeau county;

and it was further ordered then and there that the clerk of the circuit court shall make a full and complete copy of said order and deliver the same to the sheriff of said county, who was then and there ordered to serve each defendant with a copy thereof.

And your petitioners say that in obedience to the order of the Hon. J. D. Foster they are advised that a copy of said order was immediately thereafter served on each of said defendants, and that in consequence thereof the said James M. Seibert, collector as aforesaid of said county, had, from the day of service thereof, to wit, January 1, 1884, ceased all efforts to collect said special tax or any part thereof; that in consequence of said order all proceedings looking to the collection of said special tax and the payment of the judgments, respectively, due to your petitioners have been abandoned and totally given up.

Your petitioners further represent that the said order of the Hon. J. D. Foster is without authority of law and is an unwarrantable interference with the commands of this court made in certain
7 causes pending herein, and of which this court had full and perfect jurisdiction both in the matter of parties and the subject-matter of said suits; and they respectfully represent that until proper action is taken by this court the said collector has announced his determination and has so informed your petitioners that he will abstain from all efforts to demand, sue for, or collect any part of said special tax; and therefore your petitioners now come and present these facts to the court and pray that, notwithstanding the pretended order of injunction herein recited, the said collector be ordered and commanded by this court to proceed forthwith to make collection of the special tax heretofore levied by the county court of Cape Girardeau county for the payment of the judgments obtained in this court against Cape Girardeau county and herein recited, or show cause to this court, on or before the 2d day of June, 1884, for his refusal so to do, and that so soon as said taxes shall have been collected he shall report the proceeds thereof to the said county court, as required by law.

FISHER & ROWELL.
J. B. HENDERSON &
J. M. LEWIS.

And afterwards, to wit, on the tenth day of May, A. D. 1884, at a regular stated term of said circuit court, the following proceedings were had and appear of record in said court, to wit:

Order for Alternative Mandamus.

UNITED STATES *ex rel.* JAMES M. LEWIS, Administrator of Elisha Foote, Deceased; Ninth National Bank of New York, John T. Hill, Valentine Winter, and George W. Harshman, Relators,

vs.

JAMES M. SEIBERT, Collector of Cape Girardeau County, Missouri, Respondent.

8 Now come the said relators, by their respective attorneys, and present to the court their petition for a mandamus against

James M. Seibert, collector of Cape Girardeau county, Missouri, to collect the special tax heretofore levied and ordered by the county court of said county to be collected to pay the several judgments heretofore rendered herein in favor of said relators and against said county, amounting in the aggregate to the sum of fourteen thousand two hundred and eighty-eight dollars and twenty cents ($14,288.20), with interest thereon, and costs.

Upon consideration whereof, and being fully advised in the premises, it is by the court ordered that an alternative writ of mandamus issue herein, to be directed to the said James M. Seibert, collector of said county, commanding him to forthwith make collection of the said special tax heretofore levied by the county court of said Cape Girardeau county for the payment of the said judgments obtained as aforesaid, or that he show cause before this court on or before the second day of June, A. D. 1884, why he refuses so to do, and that so soon as said taxes shall have been collected, he, the said collector, shall report the proceeds thereof to the said county court, as required by law.

And thereupon, on the 12th day of May, 1884, there was issued out of said circuit court an alternative writ of mandamus in words and figures following, to wit:

Alternative Writ.

UNITED STATES OF AMERICA, *Eastern District of Missouri,* } *ss:*

The President of the United States of America to James M. Seibert, collector of Cape Girardeau county, Missouri, Greeting:

9 Whereas it has been represented to our circuit court of the United States for the eastern district of Missouri by James M. Lewis, administrator of Elisha Foote, deceased; the Ninth National Bank of New York, John T. Hill, Valentine Winter, and George W. Harshman, relators, that one — day of ——, 1883, a peremptory writ of mandamus was issued by this court commanding the county court of Cape Girardeau county and the judges thereof to make a levy on all the real estate and personal property in Cape Girardeau township subject to taxation, including statements of merchants and manufacturers doing business in said township, and thereupon the county court, in compliance therewith and in obedience to the command of said writ, on the 23rd day of May, A. D. 1883, during a regular term of said county court, made an order and entered the same on the records of said court, whereby it was ordered as follows, to wit: "That for the purpose of paying the judgments of Elisha Foote, Ninth National Bank of New York, John T. Hill, Valentine Winter, and George W. Harshman, amounting to $14,288.20, and interest and costs, enforced by peremptory and *alias* peremptory writs of mandamus from the United States circuit court for the eastern district of Missouri, and other necessary expense, a tax of two per cent. be, and is hereby, levied on all the real estate and

personal property in Cape Girardeau township subject to taxation, including statements of merchants and manufacturers doing business in said township, and the clerk of this court is ordered to extend said tax in a separate column on the tax-books of said county for the year 1883."

That in obedience to the provisions of said order the special tax ordered to be levied as aforesaid was by the clerk of said court
10 entered upon and extended in a separate column of the regular tax-books of Cape Girardeau county for the year 1883, and upon the completion of said tax-book the same was delivered in the time and in the manner required by law for the year 1883 to James M. Seibert, collector, who was then and there the collector of taxes, duly elected and qualified as such and acting therein for the year 1883, and the said collector then and there was ordered by the county court to proceed and collect the said special tax in the same manner as other taxes, State and county, were authorized to be collected for the said year 1883 in said county; that after the receipt of said tax-book the said collector was proceeding, as ordered by the said county court under and by virtue of said writ of mandamus, to collect said special tax and to return the amount so collected to the treasurer of said county, as provided by law in such cases, and while so engaged in the lawful discharge of his duties one Maurice Cramer, county attorney for said Cape Girardeau county, caused to be presented to the Hon. J. D. Foster, judge of the tenth judicial circuit of the State of Missouri, a petition in the name of the State of Missouri upon relation of said Maurice Cramer, as prosecuting attorney of said county, against Wm. Hager, Samuel Hitt, and Robert Snider, judges of the county court of Cape Girardeau county, and Gabriel C. Pepper, clerk of said county court, and the said John M. Seibert, collector of said county of Cape Girardeau, Missouri, in which said petition it is stated that said county judges had caused to be levied the aforesaid special tax, and that said special tax was not necessary to pay the bonded indebtedness of the State of Missouri, nor was it a tax for current county expenses, or for school purposes, and that the said county court, before levying said tax, had not made or caused to be made an application to the circuit court of said county nor to the
11 judges thereof, in vacation, for an order to have said tax levied and collected, and that neither said circuit court nor the judge thereof had previously made an order for the collection thereof, and that said county court had assessed and levied said special tax without authority and in violation of the statutes in such cases made and provided. In said petition it is further stated that in the year 1868 the said county court had caused to be issued $150,000 in bonds under the act of the General Assembly of the State of Missouri approved March 23, 1868, and that said special tax had been levied to pay off a portion of said debt, and the same had been illegally levied upon all the real and personal property of said township; that the said Seibert is the collector of said county, and that he is now threatening to collect said tax so illegally assessed, and threatens to distrain personal property for the purpose of paying

said tax, and, when this is insufficient, to proceed to secure the same by other means. Thereupon it is prayed that an injunction issue restraining the defendants named in said proceeding and their successors in office from collecting or attempting to collect said tax, and on final hearing that said injunction be made perpetual, and other equitable relief is sought therein.

Said relators further say that said petition was presented to said judge, in chambers, at Commerce, in the county of Scott and State aforesaid, on the 29th day of December, 1883, when and where the said judge caused an order to be made restraining the said defendants and each and every of them from collecting or attempting to collect the said special tax of two per cent. so levied by the court of Cape Girardeau county or any other tax levied by the said county court at its May term, 1883, and usually denominated the
12 railroad tax levied upon the tax-payers of Cape Girardeau township aforesaid, until the matter and things stated in said petition can be inquired of by the circuit court of Cape Girardeau county; and it was further ordered then and there that the clerk of the circuit court shall make a full and complete copy of said order and deliver the same to the sheriff of said county, who was then and there ordered to serve each defendant with a copy thereof.

That, in obedience to the order of the Hon. J. D. Foster, they are advised that a copy of said order was immediately thereafter served on each of said defendants, and that in consequence thereof the said James M. Seibert, collector as aforesaid of said county, had from the day of service thereof, to wit, January 1st, 1884, ceased all efforts to collect said special tax or any part thereof; that in consequence of said order all proceedings looking to the collection of said special tax and the payment of the judgments respectively due to your relators have been abandoned and totally given up; that the said order of the Hon. J. D. Foster is without authority of law and is an unwarrantable interference with the command of this court made in certain causes pending herein, and of which this court had full and perfect jurisdiction, both in the matter of parties and the subject-matter of said suits; and they respectively represent that until proper action is taken by this court the said collector has announced his determination, and has so informed your relators, that he will abstain from all efforts to demand, sue for, or collect any part of said special tax:

Now, therefore, we, being willing that due and speedy justice be done in the premises, notwithstanding the pretended order of injunction herein recited, do command you, James M. Seibert,
13 collector as aforesaid of Cape Girardeau county, Missouri, to proceed forthwith to make collection of the special tax heretofore levied by the county court of Cape Girardeau county and herein recited, or that you show cause to this court, on or before the second day of June, 1884, why you refuse so to do.

And you are hereby further commanded that so soon as the said taxes shall have been collected you report the proceeds thereof to the said county court as required by law.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 12th day of May, A. D. 1884.

Issued at office, in the city of St. Louis, in said district, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.] A. P. SELBY, *Clerk*,
By T. L. CRAWFORD, *Deputy*.

UNITED STATES OF AMERICA, *Eastern District of Missouri*, } ss:

I hereby certify that I have served this writ by delivering a certified copy of the same to James M. Seibert, collector of Cape Girardeau county, on the 14th day of May, A. D. 1884, at Jackson, in the county of Cape Girardeau, in the above district.

FELIX COSTE,
U. S. Marshal,
By O. K. WHEELER, *Deputy*.

And afterwards, to wit, on the third day of June, A. D. 1884, there was filed in said cause a certain return to alternative mandamus in words and figures following, to wit:

Return to Alternative Writ of Mandamus.

In the Circuit Court of the United States, Eastern District of Missouri.

14 THE PRESIDENT OF THE UNITED STATES at the Relation of James M. Lewis, Administrator of Elisha Foote, Deceased; The Ninth National Bank of New York, John T. Hill, Valentine Winter, and George W. Harshman, Plaintiffs,

against

JAMES M. SEIBERT, Collector of the County of Cape Girardeau, Missouri, Respondent.

Now, at this time, comes the respondent and, for his return to the alternative writ of mandamus issued in this cause, admits that he is the collector of the county of Cape Girardeau, Missouri, duly elected, qualified, and acting; admits that on the — day of ——, 1883, a peremptory writ of mandamus was issued by this court commanding the county court of Cape Girardeau county and the judges thereof to make a levy on all the real estate and personal property in Cape Girardeau township subject to taxation, including statements of merchants and manufacturers doing business in said township, and that, in obedience to said writ, the said county court made and entered of record an order levying a tax of two per cent. on all the real estate and personal property in Cape Girardeau township subject to taxation, including statements of merchants and manufacturers doing business in said township, for the purpose of paying certain judgments obtained by these relators against the said county,

and directing the clerk of said court to extend said tax in a separate column in the tax-books of said county for the year 1883, as
15 more fully set forth in the petition filed in this cause.

Admits that the said special tax was by the clerk of said court entered upon and extended in a separate column of the regular tax-books of Cape Girardeau county for the 1883, and that upon completion of said tax-book the same was delivered to this respondent, collector as aforesaid, in the time and manner required by law, but respondent denies that the said county court ordered him to proceed and collect said special tax in the same manner as other taxes, State and county, were authorized to be collected for said year 1883, in said county, as is alleged, or that the said county court had any legal authority to make such order.

And respondent states that upon the receipt of said tax-books for the year 1883 he at once proceeded to collect said special tax with the other taxes extended on said tax-books, and that while he was so engaged and was proceeding with due diligence and by all lawful means to collect the same he was served with a notice that on the 29th day of December, 1883, there would be presented to the Honorable John D. Foster, judge of the tenth judicial circuit of Missouri, a petition praying for an order restraining and enjoining this respondent from collecting or attempting — the said special tax of two per cent.

That on the said 29th day of December, 1883, there was presented to the Honorable John D. Foster, judge of the tenth judicial circuit as aforesaid, in vacation, a petition for injunction in words and figures as follows:

Injunction.

THE STATE OF MISSOURI *ex rel.* MAURICE CRAMER, Prosecuting Attorney of Cape Girardeau County, Missouri, Plaintiff,

against

WILLIAM HAGER, SAMUEL HITT, and ROBERT SNIDER, Judges
16 of the County Court of Cape Girardeau County, Missouri; Gabriel C. Pepper, County Clerk, and James M. Seibert, Collector of Cape Girardeau County, Mo., Defendants.

The petition of plaintiff respectfully shows that he is prosecuting attorney of Cape Girardeau county, State of Missouri, and further states that defendants, William Hager, Samuel Hitt, and Robert Snider, are the judges of the county court of Cape Girardeau county, and Gabriel C. Pepper the clerk thereof.

That as such said judges have the power to levy and cause to be collected the State tax and tax necessary to pay the funded or bonded indebtedness of the State, together with the tax for current county expenses and for schools, and beyond this they have no power or authority to levy or cause to be collected any tax, except upon the order of the circuit court of said county or of the judge thereof, made in vacation, as by the statutes of the State of Missouri in — cases made and provided.

And plaintiff says that at the May term, 1883, of the county court of said county said William Hager and others, judges as aforesaid, caused to be levied and ordered to be collected as other taxes, etc., a tax of two per centum on all the taxable property of Cape Girardeau township in said county, etc., which said two per centum tax was not for State tax and tax necessary to pay the funded or bonded debt of the State, nor was it a tax for current county expenses and schools, or either.

That said county court, before making the levy and order as aforesaid, did not make or cause to be made an application to the circuit court of said county nor to the judge thereof,
17 in vacation, for an order to have assessed, levied, and collected said two per cent. tax, nor was any such order in fact made by such court or the judge thereof, in vacation.

That, on the contrary, said county court, in violation of the statutes in such made and provided and in usurpation of their power, had assessed and levied, and are now trying to have collected, said two per cent. tax at its assessed valuation of all the taxable property of said township, without said permission or order of said court, in violation of their duties and without authority of law.

Plaintiff further states that the said county court of Cape Girardeau county, in the year A. D. 1868, for and on behalf of the said township, in the said county, caused to be issued one hundred and fifty thousand dollars in bonds by virtue of the act of the General Assembly of the State of Missouri approved March 23d, 1868.

That the aforesaid levy of the two per cent. tax was made for the purpose of paying off a portion of the said bonded debt, and is in violation of the said act, because levied upon all the real and personal property within said township; that James M. Seibert, one of the defendants herein, is the collector of said county, and that he is now threatening to collect said tax so illegally assessed as aforesaid, and threatens, as this plaintiff is informed and believes, to distrain enough personal property belonging to the tax-payers of said township to pay said tax, and where this is insufficient, to proceed to recover the same by other means, etc.

Plaintiff says that the whole amount of taxes so levied as aforesaid amounts to about fourteen or fifteen thousand dollars.

Wherefore, the premises considered, plaintiff prays that an
18 injunction issue restraining defendants herein and their successors in office from collecting or attempting to collect said tax, and on final hearing that said injunction be made perpetual, and for all other equitable relief that is right and proper.

And respondent further states that thereupon, to wit, on the said 29th day of December, 1883, the Honorable John D. Foster, circuit judge as aforesaid, having jurisdiction in the premises and full power and authority so to do, granted a temporary injunction in substance as follows:

"Whereas it appearing to the satisfaction of the undersigned, John D. Foster, judge of the tenth judicial circuit of the State of Missouri, that the defendants in the above-entitled cause have been duly served with notice that an application would be made to the

undersigned on this 29th day of December, A. D. 1883, for an order restraining the said defendants from doing the acts complained of in the above-entitled suit, and it further appearing to me from the petition of the plaintiff herein, now before me, that, upon the facts stated in the said petition, the plaintiff is entitled to have issued against the defendants an order from me restraining them and each of them from taking any steps towards the collection of the tax in the said petition set forth until the matters and things therein stated can be inquired of by the Cape Girardeau county circuit court:

"Wherefore it is ordered by the undersigned judge that each and every one of the said defendants, William Hager, Samuel Hitt, and Robert Snider, judges of the county court of Cape Girardeau county; Gabriel C. Pepper, county clerk, and James M. Seibert, collector, for Cape Girardeau county, Missouri, be, and are hereby, enjoined and restrained by themselves, agents, deputies, and servants, from
19 collecting or attempting to collect a two per cent. tax or any other tax levied by virtue and authority of an order of the county court of Cape Girardeau county, Missouri, made at its May term, A. D. 1883, and ordered to be collected as other taxes are collected and generally called 'the railroad tax,' and levied upon all the real and personal property of the tax-payers of Cape Girardeau township, Cape Girardeau Co., Mo., until the matters and things stated in the said petition can be inquired of by the said circuit court of Cape Girardeau county. And it is further ordered by the undersigned that the clerk of the Cape Girardeau circuit court shall make a full, true, and complete copy of this order, attested by the seal of the said Cape Girardeau county circuit court, and deliver the same to the sheriff of said county, who is ordered to serve each defendant with a copy of this order so received by him from the said clerk without delay, and that he make return hereof as the law directs."

And respondent further states that the said restraining order was duly served upon him, and thereupon and in obedience to the said writ of injunction and not until then he ceased to collect or to endeavor to collect said special tax.

That said temporary writ of injunction was made returnable to the May term, 1884, of the circuit court of Cape Girardeau county, and that so soon as the same was served upon him respondent employed counsel, and at the May term, 1884, of said court filed his answer in said cause, as well as his motion, to dissolve the said injunction.

That said cause is yet pending in the said circuit court and is undetermined, and that respondent is in good faith and by all lawful means contesting and defending the same.

That he is informed by counsel that said circuit court of Cape Girardeau county has full and complete jurisdiction to
20 hear and determine said suit, and that by the rules of said court said action is not triable till the August term, 1884, to be begun and held on the fourth Monday of said month.

And respondent further states that he cannot, without violating the said restraining order of the circuit court of Cape Girardeau

county, collect or attempt to collect said special tax, and for that reason and none other he has failed since the service of the said writ of injunction to make any further endeavor to collect said tax or any part thereof.

And for further return respondent states that he is ready and willing to do and perform every duty devolved upon him as collector as aforesaid, so far as he legally may, but submits whether he ought to be required to collect the said special tax so as aforesaid levied by the said county court of Cape Girardeau county, because, as he is informed by counsel, the same was not levied in the mode and manner required by the laws of the State of Missouri, as set forth in sections 6798 and 6799 of the Revised Statutes, concerning the assessment and collection of the revenue, and it is made a criminal offense, punishable by fine of not less than five hundred dollars and forfeiture of office, for any officer in the State of Missouri to collect or attempt to collect any tax or taxes other than those specified and enumerated in section 6798 of the Revised Statutes of Missouri without being ordered so to do by the circuit court of the county, or the judge thereof in vacation, in the manner provided and directed in section 6799 of said Revised Statutes.

And respondent submits that the said special tax is not a tax specified and enumerated in section 6798 of the Revised Stat-
21 utes of Missouri, and that no order was made by the circuit court of Cape Girardeau county directing the said county court to have assessed, levied, and collected such special tax as required by section 6799 of the Revised Statutes of Missouri, and that he is informed by counsel that the said levy of such special tax so as aforesaid made by said county court is illegal and void, and that respondent cannot collect or attempt to collect the same without violating the criminal laws of the State of Missouri.

Wherefore, having made full return herein, respondent prays to be discharged.

JAMES M. SEIBERT.

THOROUGHMAN & VALLIANT,
Solicitors for Respondent, with Whom is R. H. Whitelaw.

Subscribed and sworn to before me this 3rd day of June, 1884.

JAMES HOLLAND,
U. S. Commissioner.

And afterwards, to wit, on the 3rd day of June, A. D. 1884, there was filed in said cause a certain demurrer in words and figures following—that is to say:

Demurrer to Return.

In the Circuit Court of the United States, Eastern District of Missouri.

THE PRESIDENT OF THE UNITED STATES in Relation of JAMES M. LEWIS *et als.*

vs.

JAMES M. SEIBERT.

And now comes the relator and demurs to the return of said Seibert, and for cause of demurrer states—

That said return does not state facts sufficient to constitute a return and defense to said relator's information.

22 That said return does not show a defense to said mandamus or cause why the same should not issue.

That said sections of the statutes of Missouri referred to in said return do not apply to relator's judgment, and are unconstitutional and void as to said judgment.

JOHN B. HENDERSON,
FISHER & ROWELL,
For Relator.

On the filing of the foregoing demurrer the following proceedings were had and appear of record in said cause on said third day of June 1884, to wit:

Demurrer to Return Sustained.

UNITED STATES *ex rel.* JAMES M. LEWIS, Administrator of Elisha Foote, Deceased, Relator,
vs.
JAMES M. SEIBERT, Collector of Cape Girardeau County, Missouri, Respondent. } 1975.

Now comes the respondent, by his attorney, and files return to the alternative writ of mandamus herein, to which return relator, by attorney, files demurrer; and the court, having considered said demurrer to said return, finds the law thereon for the relator, and orders that said demurrer be, and the same is hereby, sustained.

Peremptory Writ Ordered.

And thereupon, on motion, it is ordered by the court that a peremptory writ of mandamus issue herein, returnable to the next term of this court, to be directed to the said respondent, James M. Seibert, collector of said county, commanding him to forthwith make collection of the special tax heretofore levied by the county court of said Cape Girardeau county for the payment of the judgment heretofore obtained by Elisha Foote against said county upon coupons

23 for interest on bonds issued by said county for and on behalf of Cape Girardeau township, in said county, and that so soon as said taxes shall have been collected he, the said collector, shall report the proceeds thereof to the said county court,

as required by law, and that he certify perfect obedience to said writ to this court on the first day of the next term thereof on the third Monday, the 15th day, of September next.

Whereupon, on motion, it is ordered that the respondent have leave until to-morrow morning to sue out a writ of error to remove this cause to the Supreme Court of the United States and to file a bond in the sum of one thousand dollars, to operate as a supersedeas.

And afterwards, on the 4th day of June, A. D. 1884, the following further proceedings were had and appear of record in said cause, to wit:

Supersedeas Awarded.

UNITED STATES *ex rel.* JAMES M. LEWIS, Administrator of Elisha Foote, Deceased, Relator,
vs.
JAMES M. SEIBERT, Collector of Cape Girardeau County, Missouri, Respondent. } 1975.

Now comes the respondent, by attorney, and, in pursuance of the leave given in open court on June third, presents to the court a writ of error to remove this cause to the Supreme Court of the United States, and a citation, citing and admonishing the said relator to be and appear at a Supreme Court of the United States at the next term thereof, on the second Monday of October next; which said writ of error is allowed and said citation signed by the judge. And the said respondent also presents to the court his bond in the penal sum of one thousand dollars; which bond is approved and ordered to be filed.

24 And thereupon, on motion of said respondent, by attorney, it is ordered that a supersedeas be awarded staying further proceedings on the mandamus herein.

Said bond is in words and figures following, to wit:

Bond.

Know all men by these presents that we, James M. Seibert, as principal, and David L. Hawkins and Wm. B. Anderson, of Missouri, sureties, are held and firmly bound unto James M. Lewis, administrator of the estate of Elisha Foote, deceased, relator, in the full and just sum of one thousand dollars, to be paid to the said James M. Lewis, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fourth day of June, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas lately at the March term, A. D. 1884, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between United States *ex rel.* James M. Lewis, administrator of the estate of Elisha Foote, deceased, relator, and James

M. Seibert, collector of Cape Girardeau county, Missouri, respondent, judgment was rendered against the said James M. Seibert, collector, respondent, and the said James M. Seibert, collector, respondent, having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said James M. Lewis, administrator, relator, citing and admonishing him to be and appear at a supreme court of the United States, to be holden at Washington the second Monday of October next:

25 Now the condition of the above obligation is such that if the said James M. Seibert, collector of Cape Girardeau county, respondent, shall prosecute said writ to effect and answer all damages and costs if he fail to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

JAMES M. SEIBERT. [SEAL.]
WILLIAM B. ANDERSON. [SEAL.]
D. L. HAWKINS. [SEAL.]

Approved by—
SAMUEL TREAT.

UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

In the Circuit Court of the United States in and for said District.

David L. Hawkins & Wm. B. Anderson, obligors in the within bond, being duly sworn, each on his oath deposes and says that he resides as stated therein, and is worth, over and above all his debts and liabilities, the sum of twenty thousand dollars, and that he owns real estate to that amount subject to execution within the eastern District of Missouri.

D. L. HAWKINS.
W. B. ANDERSON.

Subscribed and sworn to by said David L. Hawkins & Wm. B. Anderson, the above-named affiants, this 4th day of June, A. D, 1884, before me, at my office, in the city of St. Louis.

[SEAL.] JAMES HOLLAND,
Com'r U. S. Cir. Court, E. Dist. Mo.

26 UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

I, A. P. Selby, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto attached to be a true transcript of the record and proceedings in case No. 1975 of United States *ex rel.* James M. Lewis, administrator of the estate of Elisha Foote, deceased, relator, against James M. Seibert, collector of Cape Girardeau county, Missouri, respondent, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in said district, this 27th day of June, in the year of our Lord eighteen hundred and eighty-four.

{ Seal of the United States Circuit Court, Eastern District of Missouri. }

A. P. SELBY,
Clerk of said Court.

[Endorsed:] No. 1975. United States circuit court, eastern district of Missouri. U. S. *ex rel.* James M. Lewis, administrator, &c., against James M. Seibert, collector. Duly certified transcript in the above-entitled cause.

Endorsed on cover: E. Missouri C. C. U. S. No. 299. James M. Seibert, collector of Cape Girardeau county, plaintiff in error, *vs.* The United States *ex rel.* James M. Lewis, administrator of the estate of Elisha Foote, deceased. Filed 15th September, 1884.

122-284

FILED
MAY 9 1887
JAMES H. McKENNEY
CLERK

Supreme Court of the United States.

No. 299.—October Term, 1886.

James M. Seibert, Collector of Cape Girardeau County, Missouri,
Plaintiff in Error,
vs.
United States, ex rel. James M. Lewis, Administrator of Elisha Foote,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

ELLIS, JOHNS & McKNIGHT,
Attorneys for Plaintiff in Error.

Pearson, Pr., 9th and D sts.

Supreme Court of the United States.

No. 299.—October Term, 1886.

James M. Seibert, Collector of Cape Girardeau County, Missouri,
Plaintiff in Error,
vs.
United States, ex rel. James M. Lewis, Administrator of Elisha Foote,
Defendant in Error.

Brief for Plaintiff in Error.

Case Stated.

Elisha Foote, the relator's intestate, and others obtained judgments against Cape Girardeau Township, of Cape Girardeau County, in the State of Missouri, to the amount of $14,288.20, in the Circuit Court of the United States for the Eastern District of Missouri, on account of certain bonds, and the interest thereon, which were issued by the County Court of Cape Girardeau County in the year 1868, for and on behalf of said township, by virtue of the act of the General Assembly of the State of Missouri, approved March 23, 1868. (Pages 3, 4, 6, and 11 of Record.)

At the March Term, 1884, of the Circuit Court, the relator petitioned the Court, alleging that on the day of , 1883, a peremptory mandamus had been issued by the Court to the County Court of Cape Girardeau

County, commanding it "to make a levy on all the real estate and personal property in Cape Girardeau Township subject to taxation, including statements of merchants and manufacturers doing business in said township," (Record pp. 3, 4 and 5); that the County Court made the levy on the property mentioned, as ordered, for the year 1883, and, on the completion of the tax books by the clerk of the court, its clerk turned them over to James M. Seibert, the collector of the county, the plaintiff in error, who proceeded thereupon to collect said special tax that had been so levied to pay off said judgment; that, while thus engaged, Seibert was served with an injunction, issued by the Judge of the Tenth Judicial District of the State of Missouri, on December 29, 1883, and served on Seibert January 1, 1884, enjoining and restraining him and his successor in office from proceeding to collect said special tax, on the ground that the same had been illegally assessed; that thereupon Seibert ceased at once to collect said special tax; and the relator and others, judgment creditors of Cape Girardeau Township, prayed the Court, notwithstanding the injunction from the State Court for a mandamus on Seibert, the collector, to compel him to proceed with the collection of said special tax so levied.

May 10, 1884, the Circuit Court ordered the writ, as prayed, and on May 12, 1884, an alternative writ of mandamus was issued, and served on Seibert on May 14, 1884. (Pages 6, 7, 8, and 9 of Record.)

June 3, 1884, Seibert, the collector, answered and made return to this alternative mandamus, (pp. 9, 10, 11, and 12 of Record,) admitting the delivery to him of the tax books by the clerk of the County Court, as above stated, but denying that the County Court had ordered him to proceed and collect said special tax in the same manner as other taxes, State and county, were authorized to be collected for said year 1883 in said county, "as is alleged, or that the said County Court had any legal authority to

make such order," stating that, on the receipt of the tax books, he at once proceeded to collect said special tax, when he was served with notice of the intended application to be made December 29, 1883, for the injunction mentioned, and that said injunction was on that day issued, enjoining and restraining him from collecting said special tax, and was duly served on him, and that in obedience thereto he ceased the collection of the tax; that, this temporary injunction being returnable to the May Term of the Circuit Court for Cape Girardeau County, he at once employed counsel, and at that term filed his answer in the cause and a motion to dissolve the injunction; that the cause is still pending, and that he has defended it in good faith; that he cannot, without violating said injunction, proceed to collect said tax, and that if he does, he is advised by counsel, that he is liable under the laws of Missouri to very heavy penalties; and he alleges that the assessment and levy of said special tax were not made in accordance with the laws of the State of Missouri which provide for the same, and are illegal and void, and that he cannot proceed to the collection of the tax without violating the criminal laws of the State, and he prays a discharge.

The relator *et al.* demurred (p. 14 of Record) to the return, that it was insufficient and did not constitute a good defence, and that the Missouri laws, which the respondent refers to as forbidding the assessment and levy of said special tax, and rendering him criminally liable if he makes the collection, viz., Sections 6798 and 6799, etc., of the Revised Statutes of Missouri, are unconstitutional and void as to these judgments, to pay which the tax was levied.

The court sustained the demurrer, and ordered a peremptory mandamus against Seibert, commanding him forthwith to collect said tax, etc., wherefore Seibert sues out a writ of error to this court.

ERRORS ASSIGNED.

These, so far as now relied on, are simply that the court erred in sustaining the demurrer, and the objections stated therein to the return of James M. Seibert, the collector, to the alternative writ of mandamus, and in not discharging the respondent.

ARGUMENT.

The return sets out facts sufficient to constitute a return, because it shows that the respondent was proceeding in good faith under the order of the County Court to collect the tax, when he was advised that said proceeding was illegal under the statute of Missouri, and this information was enforced by the issue of an injunction from a court of competent jurisdiction.

His primary defence, therefore, is that the writ of mandamus has commanded him to do an illegal act, and this is sufficient in law.

State *v.* Perrine, 34 N. J., 254.
Johnson *v.* Lucas, 11 Humph., 307.
The State *v.* The Judge, 15 Ala., 58.
Knox County *v.* Aspinwall, 24 How., 376, and cases following, *infra.*

The statutes of Missouri controlling the method of collecting this tax, in force at the date of the relator's judgment and the issue of the mandamus to the County Court, are Sections 6798, 6799, and 6800 of the Revised Statutes of Missouri of 1879, which read as follows:

"Sec. 6798. *Taxes, how assessed, levied, and collected.*—The following-named taxes shall hereafter be assessed, levied, and collected in the several counties in this State, and only in the manner and not to exceed the rates prescribed by the constitution and laws of this State, viz: The State tax and the tax necessary to pay the funded or bonded debt of the State, the tax for current county expenditures, and for schools." (Laws 1879, p. 185, sec. 1.)

"Sec. 6799. *Procedure, limitations, and conditions.*—No other tax for any purpose shall be assessed, levied, or

collected, except under the following limitations and conditions, viz: The prosecuting attorney or county attorney of any county—upon the request of the county court of such county, which request shall be of record with the proceedings of said court, and such court being first satisfied that there exists a necessity for the assessment, levy, and collection of other taxes than those enumerated and specified in the preceding section—shall present a petition to the circuit court of his county, or to the judge thereof in vacation, setting forth the facts and specifying the reasons why such other tax or taxes should be assessed, levied, and collected; and such circuit court, or judge thereof, upon being satisfied of the necessity for such other tax or taxes, and that the assessment, levy, and collection thereof will not be in conflict with the constitution and laws of this State, shall make an order directed to the county court of such county, commanding such court to have assessed, levied, and collected such other tax or taxes, and shall enforce such order by mandamus or otherwise. . . ." (Laws 1879, p. 185, sec. 2.)

"SEC. 6800. *Assessment, levy and collection not to be made except as provided.*—Any county court judge, or other county officer in this State, who shall assess, levy or collect, or who shall attempt to assess, levy or collect, or cause to be assessed, levied or collected, any tax or taxes other than those specified and enumerated in section six thousand seven hundred and ninety-eight, without being first ordered so to do by the circuit court of the county or the judge thereof, in the express manner provided and directed in section six thousand seven hundred and ninety-nine, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by fine not less than five hundred dollars, and, in addition to such punishment, his office shall become vacant; and the method herein provided for the assessment, levy and collection of any tax or taxes not enumerated and specified in section six thousand seven hundred and ninety-eight, shall be the only method known to the law whereby such tax or taxes may be assessed or collected, or ordered to be assessed, levied or collected." (Laws 1879, p. 185, sec. 3.)

The purpose of these provisions is to protect the people of the State from the imposition of unjust and illegal taxes by the County Courts, which are not judicial tribunals,

and are not competent to deal with the delicate and perplexing legal questions which are continually arising upon cases involving the collection of special taxes.

Said section 6800 makes it a crime for the collector to collect the special tax which the County Court, in executing the order of the Circuit Court of the United States, had directed the plaintiff in error to collect, because said tax was assessed and levied in a manner not in accordance with the provision of section 6799, to wit, without the order of the Circuit Court of the State.

Said statutes are constitutional, and they were binding upon the County Court and the plaintiff in error.

State *v.* H. & St. J. Railroad Co., 87 Mo. 236.
State *v.* Seibert, (a certified copy of which is herewith filed.)

The Federal courts will lean towards an agreement with the decisions of the State courts in the matter of the construction of their statutes.

Burgess *v.* Seligman, 107 U. S., 33.
Anderson *v.* Santa Anna Township, 116 U. S., 356.
Norton *v.* Shelby County, 118 U. S., 425.

Where this court has ignored certain preliminary requirements of the statutes of a State, in the matter of levying and collecting taxes, it has been where they were non-essentials, and not (as in this case) where they were commanded under penalty of criminal punishment.

Hawley *v.* United States, 108 U. S., 543.
Labette County *v.* United States, 112 U. S., 217.

In directing the plaintiff in error by this writ of mandamus to do an unlawful act, expressly forbidden, the Circourt Court exceeded its jurisdiction.

Knox County *v.* Aspinwall, 24 How., 376.
Supervisors *v.* United States, 18 Wall., 71.
Barkley *v.* Levee Commissioners, 93 U. S., 258.
United States *v.* Clarke County, 95 U. S., 769.

Memphis *v.* United States, 97 U. S., 293.
United States *v.* Macon County, 99 U. S., 582.
Merriwether *v.* Garrett, 102 U. S., 472.
Ex-parte Rowland, 104 U. S., 604.

The writ of the Circuit Court, directing the plaintiff in error to collect the tax illegally levied under the statute, was in effect a levy and collection by the Circuit Court, and was, therefore, beyond its power.

Rees *v.* Watertown, 19 Wall., 107.
Heine *v.* Levee Commissioners, 86 U. S., 655.
Merriwether *v.* Garrett, 102 U. S., 472.
People *v.* Railroad Co., 55 Ill., 96.
Williams *v.* County Commissioners, 35 Me., 345.

A writ of mandamus cannot compel a levy in any other time or manner than that provided by law.

Supervisors *v.* Klien, 51 Miss., 807.
People *v.* Westford, 53 Barb., 555.

In this case, by the enactment in the Revision of 1879 of the provisions cited, there was no impairment of the obligation of the contract entered into when the bonds were issued, as will appear from a comparison of said sections with Section 2, Act approved March 23, 1868, (Laws of 1868, p. 92,) entitled "An Act to facilitate the construction of railroads in the State of Missouri," which reads as follows:

"Sec. 2. In order to meet the payments on account of the subscription to the stock, according to its terms, or to pay the interest and principal on any bond which may be issued on account of such subscription, the County Court shall, from time to time, levy and cause to be collected, in the same manner as county taxes, a special tax, which shall be levied on all the real estate lying within the township making the subscription in accordance with the valuation then last made by the county assessor for county purposes."

The manner of levying and collecting county taxes in 1868, when the bonds in question were issued, is prescribed by the following sections of the General Statutes of Missouri of 1865:

"Sec. 76. The several county courts are empowered to levy such sums as may be annually necessary to defray the expenses of their respective counties by a tax upon all property and licenses made taxable for State purposes; but the county tax shall in no case exceed the State tax on the same subject of taxation, more than one hundred per centum for the same time; but the county of St. Louis County is empowered to impose such additional taxes, to pay fines and for other purposes, as may be prescribed by law.

"Sec. 77. As soon as may be after the assessor's book of each county shall be corrected and adjusted, according to law, the county court shall ascertain the sum necessary to be raised for county purposes, and fix the rate of taxes on the several subjects of taxation, so as to raise the required sum, and the same shall be entered in proper columns in the tax book.

"Sec. 78. Whenever the county court shall ascertain the amount to be raised for county purposes, and fix the rates of county taxes, they shall cause the same to be entered of record, so as to show the whole amount to be raised, and the proportion which the rates of the county tax bear to the rates of State tax on the same subject of taxation. . . ."

When this court has held the legislative action of a State, enacted subsequently to the issue of the bonds, to be void, it has been in cases where the new law substantially prevented the satisfaction of the judgment.

Board of Liquidation *v.* McComb, 92 U. S., 531.
Cass County *v.* Johnston, 95 U. S., 360.
Murray *v.* Charleston, 96 U. S., 432.
Memphis *v.* United States, 97 U. S., 293.
United States *v.* Mayor, 103 U. S. 358.
Ralls County *v.* United States, 105 U. S., 733.
Louisiana *v.* Jumel, 107 U. S. 711.
Louisiana *v.* Police Jury, 116 U. S., 131.

But here a substantial equivalent for the original manner of levying the tax has been furnished, by which the judgment may be fully satisfied, and hence the obligation of the contract is unimpaired.

United States *v.* Mayor, 103 U. S., 358.
Ralls County *v.* United States, 105 U. S. 733.
Wolf *v.* New Orleans, 107 U. S., 358.
Antoni *v.* Greenhow, 107 U. S., 769.
Port of Mobile *v.* Watson, 116 U. S., 289.
United States *v.* Mobile, 12 Fed. Rep., 768.
Curtis *v.* Whitman, 13 Wall., 68.

The new method of levying the tax, prescribed in the Revised Statutes of 1879, was simple and efficacious, and the Circuit Court's writ of mandamus to the County Court was a perfect means of setting the machinery in motion.

The State *v.* Rainey, 74 Mo., 229.

This Court has recognized the right of the State of Missouri to amend the Act of 1868, under which these bonds were issued, in matters within its discretion.

Cape Girardeau *v.* United States, 118 U. S., 68.

It is within the discretion of the legislature of a State to change the form of levying and collecting taxes, and of this the bondholders cannot complain.

United States *v.* Quincy, 4 Wall., 535.

The States have the right to determine the manner of assessing and levying taxes, and the decisions of their courts on these questions is binding on the Federal Courts.

Wetherspoon *v.* Duncan, 16 Wall., 203.
Bailey *v.* Magwire, 22 Wall., 215.

In this case the validity of the judgment on these bonds, and the obligation of the mandamus to the County Court, are not denied. But the collector, an officer of the State, has, at the suit of the State, been enjoined from violating a positive law of the State, and the injunction

has been sustained by its Supreme Court. (State *v.* Seibert, *supra.*) In the cases below, and other cases, the injunction, which this Court has said could not be set up as a defence against a writ of mandamus from a Federal Court, issued at the suit of the defaulting debtor.

Riggs *v.* Johnson County, 6 Wall., 166.
Davenport *v.* Lord, 9 Wall., 409.
Supervisors *v.* Durant, 9 Wall., 415.
Hawley *v.* Fairbanks, 108 U. S., 546.

ELLIS, JOHNS & McKNIGHT,
Attorneys for Plaintiff in Error.

E. John Ellis
John Johns
D. A. McKnight

122-284

Supreme Court of the United States.

No. 299.—October Term, 1886.

James M. Seibert, Collector of Cape Girardeau County, Missouri,
Plaintiff in Error,
vs.
United States, ex rel. James M. Lewis, Administrator of Elisha Foote,
Defendant in Error.

SUPPLEMENTAL BRIEF

AND

Opinion of Supreme Court of Missouri upon the Injunction.

ELLIS, JOHNS & McKNIGHT,
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Pearson, Pr., 9th and D sts.

has been sustained by its Supreme Court. (State *v.* Seibert, *supra.*) In the cases below, and other cases, the injunction, which this Court has said could not be set up as a defence against a writ of mandamus from a Federal Court, issued at the suit of the defaulting debtor.

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SUPPLEMENTAL BRIEF.

Hawley *v.* Fairbanks.

The cases of Hawley *v.* Fairbanks (108 U. S., 543) and that at bar stand at the two extremes of the principle upon which that case was ruled.

In Hawley *v.* Fairbanks the Court's sole inquiry was whether the statute prescribing the form of procedure was directory or mandatory. The *town* clerk was required to do two things—one of them before issue of the bonds, the other before assessment of the tax. He did neither. The Court found that the statute was directory merely—to inform the *county* clerk of a fact—and not "a condition precedent."

But here the order of the Circuit Judge *is* a condition precedent—"the only method known to the law whereby such taxes may be assessed or collected"—and to assess or collect them otherwise if a crime.

In the case at bar, if the Court pursues the same train of reasoning that it employed in Hawley *v.* Fairbanks, *it must rule the case for the plaintiff in error.*

ALTERATION OF THE REMEDY.

In the following tax cases, additional to those on page 8 of original brief, where the Court held the subsequent legislation void, it was because the satisfaction of the judgment, in whole or in part, *was absolutely prevented.*

United States *v.* Quincy, 4 Wall., 535.
Galena *v.* U. S., 5 Wall., 705.
Butz *v.* City of Muscatine, 8 Wall., 575.
Broughton *v.* Pensacola, 93 U. S., 266.
Mt. Pleasant *v.* Beckwith, 100 U. S., 514.
Ex parte Rowland, 104 U. S., 604.
Louisiana *v.* Pillsbury, 105 U. S., 278.
County Commissioners *v.* Wilson, 109 U. S., 621.
Quincy *v.* United States, 113 U. S., 332.
Mobile *v.* Watson, 116 U. S., 289.

The true rule deducible from the authorities is, that the Legislature of the State has the completest power to "enlarge, limit, or alter" the mode of levying and collecting the tax, provided only that the method so modified is "adequate"—provided only that it is "reasonably efficacious."

Bronson *v.* Kinzie, 1 How., 311, 315: "Although a new remedy may be deemed less convenient than the old one, *and may in some degree render the recovery of the debts more tardy and difficult*, yet it will not follow that the law is unconstitutional. Whatever belongs merely to the remedy may be altered according to the will of the State, provided the alteration does not impair the obligation of the contract."—*Taney, C. J.*

United States *v.* Quincy, 4 Wall., 535, 553: "It is competent for the States to change the form of the remedy, or to modify it otherwise, as they may see fit, provided no *substantial* right secured by the contract is thereby impaired."—*Swayne, J.*

Butz *v.* Muscatine, 8 Wall., 575, 583: "It has been uniformly held by this Court that such remedies are in the protection of the Constitution of the United States, and that any State law which *substantially* impairs them is as much prohibited by that instrument as legislation which impairs otherwise the obligation of the contract. If the remedy *be taken away* the contract is in effect annulled."—*Swayne, J.*

Curtis *v.* Whitney, 13 Wall., 68, 70: "For such legislation, demanded by the public good, however it may retroact on contracts previously made, and enhance the cost *and difficulty of performance*, or diminish the value of such performance to the other party, there is no restraint in the Federal Constitution, so long as the obligation of performance remains in full force."—*Miller, J.*

Rees *v.* Watertown, 19 Wall., 107, 120: "The remedies for the collection of a debt are essential parts of the contract of indebtedness, and those in existence at the time it is incurred must be *substantially* preserved to the creditor."—*Hunt, J.*

Terry *v.* Anderson, 95 U. S., 628, 633: "They (the parties to the contract) have no more a vested interest in the time of an action than they have in the form of the action to be commenced; and as to the forms of action or modes of remedy, it is well settled that the legislature may change them at its discretion, provided *adequate* means of enforcing them remain."—*Waite, C. J.*

Tennessee *v.* Sneed, 96 U. S., 69, 74: "If a particular form of proceeding is prohibited, and another is left or is provided which affords an *effective and reasonable* mode of enforcing the right, the obligation of the contract is not impaired."—*Hunt, J.*

Brine *v.* Insurance Co., 96 U. S., 627, 637: "In the recent case of Tennesse *v.* Sneed we held that, so long as there remained a sufficient remedy on the contract, an act of the legislature changing the form of the remedy did not impair the obligation of the contract. But this doctrine was said to be subject to the limitation that there remained a remedy which was *complete*, and which secured all the *substantial* rights of the party."—*Miller, J.*

Memphis *v.* United States, 97 U. S., 293, 295: "The legislature of a State cannot take them (the contract reme-

dies) away without impairing the obligation of the contract, though it may modify them, and even substitute others, if *a sufficient remedy* be left, or another sufficient remedy be provided."—*Strong, J.*

Wolf *v.* New Orleans, 103 U. S., 358, 365: "The power of taxation belongs exclusively to the legislative department, . . . subject, however, to this qualification, which attends all State legislation, . . . that it shall not operate *directly* upon the contracts of the corporation, so as to impair their obligation by abrogating or lessening the means of their enforcement. Legislation producing this latter result—not *indirectly* as a consequence of legitimate measures taken, as will sometimes happen, but *directly* by operating upon those means—is prohibited by the Constitution."—*Field, J.*

Louisiana *v.* Pilsbury, 105 U. S., 278, 301: "The only ground on which a change of remedy existing when a contract was made is permissible, without impairment of the contract, is that a new and *adequate and efficacious* remedy be substituted."—*Field, J.*

Ralls County *v.* United States, 105 U. S., 733, 738: "The Circuit Court had authority by mandamus to require the County Court to do all the law when the bonds were issued required it to do to raise the means to pay the judgment, *or something substantially equivalent.*"—*Waite, C. J.*

Antoni *v.* Greenhow, 107 U. S., 769, 774: "It is equally well settled that changes in the forms and modes of proceeding do not amount to an impairment of the obligation of a contract, if an *adequate and efficacious* remedy is left. . . . . In all cases the question becomes, therefore, one of *reasonableness*, and of that the legislature is primarily the judge. We ought never to overrule the decision of the legislative department of the government, unless a palpable error has been committed. *If a state of facts could exist* that would justify the change in the remedy which has been made, *we must presume it did exist*, and that the law was passed on that account."—*Waite, C. J.*

Louisiana *v.* Mayor, 109 U. S., 285, 289: "When upon the faith that such taxation will be levied contracts have been made, the constitutional inhibition has been held to restrain the State from repealing or diminishing the power

of the corporation, so as to deprive the holder of the contract of *all adequate and efficacious remedy.*"—*Field, J.*

Mobile *v.* Watson, 116 U. S., 289, 305: "Where the resource for the payment of the bonds of a municipal corporation is the power of taxation existing when the bonds were issued, any law which withdraws or limits the taxing power, and leaves no *adequate* means for the payment of the bonds, is forbidden."—*Woods, J.*

Merriwether *v.* Garrett, 116 U. S., 472, 501: "The levying of taxes is not a judicial act. It has no elements of one. It is a high act of sovereignty, to be performed only by the legislature upon considerations of policy, necessity, and the public welfare. . . . Having the sole power to authorize the tax, it must equally possess the sole power to prescribe *the means* by which the tax shall be collected, and to designate the officers through whom its will shall be enforced."—*Field, Miller, and Bradley, JJ.*

In the case at bar, the method of levying the tax existing in 1868 was changed in 1879, *for the public welfare.* The substituted law was general in its application. It so happens that in the particular case of a Federal judgment, it adds a single requirement—not to the bondholder's, but—to the County Court's proceedings. That additional act—the order of the Circuit Judge—was a "legitimate means" of protecting the tax-payers from the ignorance, the recklessness, or the corruption of the County Commissioners. Under the decisions of both the Federal and State Courts, after a Federal judgment is obtained, the duty of the Circuit Judge to make the order becomes ministerial and mandatory. Hence the change is merely a change of form, while the existing method is adequate, complete, efficacious, and not unreasonable. If delay occurs, it will be of the briefest. Wherefore, the new law is not unconstitutional under the above decisions.

Cases in Point.

Louisiana *v.* New Orleans, (102 U. S., 203,) is a case directly in point, because it added to the old law a new re-

quirement before levy of the tax would be made, to wit, a registration of the judgment. This Court did not stop to inquire whether the registering officer would do his duty; they presumed it. They saw that the regulation was reasonable, and that if delay occurred it would be indirectly, and they sustained the amended law. The Court, through Mr. Justice Field, said:

"Any authorization of the postponement of payment, or of means by which such postponement may be effected, is in conflict with the constitutional inhibition. . . . But we are not able to see anything in the requirement which impedes the collection of the relator's judgment, or prevents his resort to other remedies if their payment be not obtained. The registry is a convenient means of informing the city authorities of the extent of the judgments, and that they have become executory, to the end that proper steps may be taken for their payment. It does not impair existing remedies."

It is to be observed that these relators urged upon the Court that the mandamus anwered all the purposes of the registration, just as in the case at bar, they say it is equivalent to the order of the Circuit Judge.

Curtis *v.* Whitney, 13 Wall., 68, is another case in point. There the purchaser at a tax sale was entitled to a deed in three years, subject to one condition only, viz: "unless sooner redeemed." A statute subsequently enacted provided an additional condition, to wit, a written notice to the occupant, which involved the necessity of inquiring whether there was an occupant. But the Court held this to be a not unreasonable provision, and therefore constitutional, using the language above quoted relative to possible delays.

These two cases are stronger than that at bar, for in the former the additional duty was imposed upon the contracting party, whereas in the latter it is merely a regulation of the tax-collecting machinery. After judgment in a Federal Court, it is mere matter of form. *Nevertheless it is a crime to collect the tax otherwise.*

The Circuit Court Rulings.

The decision in the case at bar was rendered without the delivery of an opinion, as we are informed, by Judge Treat.

The decision by Judge Krekel, in United States *v.* Johnson County (5 Dillon, 207), that the act of 1879 violated the obligation of the contract, was based wholly (p. 216) on his fear, or fancy, that the Circuit Judge would, under the decisions of the State Courts, hold against the validity of the tax. This mode of reasoning was vicious, and it was a mistake, for, in The State *v.* Rainey (74 Mo., 299), the Supreme Court of the State held to the exact contrary of Judge Krekel's suggestion. That decision is, therefore, without any *reason* to support it.

So, also, is without support the decision in 1879 to the same effect by Judge Dillon in United States *v.* Lincoln County (5 Dillon, 184). His sole reason for holding the act invalid was that the order of the State Circuit Court or Judge was judicial, and hence not under control of the Federal Courts. But that this view is error, as to a judgment rendered in a Federal Circuit Court, is clear from Lower *v.* U. S. (91 U. S., 536, 539), and *Ex parte* Rowland (104 U. S., 604, 613), in the latter of which cases it was held that the duty of a Probate Judge, whose approval was necessary to the levy of the tax, was ministerial, and not judicial. Further, even a judicial act may be coerced by mandamus where the discretion is "abused." (Virginia *v.* Rives, 100 U. S., 313.)

The Injunction.

The injunction in this case issued at the suit of the State, and not at that of the taxpayers; hence it presents a different case from any that has ever been before this Court.

It issued—not because the plaintiff in error was about to collect a tax which was illegally assessed, but—because

a State officer (which the collector is in Missouri) was about to usurp an authority prohibited by law.

The case went to the Supreme Court of the State, and the following is the decision sustaining the injunction.—(See Western Reporter, vol. VIII, p. 626):

STATE, EX REL. MAURICE CRAMER, Pros. Atty., *Respt.*,
v.
JUDGES OF THE COUNTY COURT OF CAPE GIRARDEAU COUNTY, ET AL., *Appts.*

[Decided March 21, 1887.]

SHERWOOD, *J.*, delivered the opinion of the court:

The Circuit Court granted a temporary injunction restraining the Judges of the County Court of Cape Girardeau County and others from collecting a certain special tax of 2 per cent, ordered to be levied on all real and personal property in Cape Girardeau Township, for the purpose of paying certain judgments rendered in the United States Circuit Court for the Eastern District of Missouri, which judgments were based on coupons attached to bonds issued under the provisions of the Act of March 23, 1868, commonly known as the Township Aid Act. On final hearing, the temporary injunction was made perpetual; and this ruling was based on the express ground that the steps required by § 6799 had not been complied with prior to extending the tax on the tax-books and levying the same.

It has been ruled by this Court that taxes of the nature now in question can only be levied and collected in the manner provided in said section, and that, unless the methods prescribed are pursued, the failure to pursue them when, as here, they are the conditions essential to the exercise of the power will render the tax invalid. *State* v. *Hannibal & St. J. R. R. Co.*, 87 Mo., 236; 7 West. Rep., 738. Here, those methods, those conditions precedent, were not followed; and hence the County Court, having no inherent power to levy a tax, and deriving its only authority from the State, must, of necessity, pursue the course in this regard marked out by the sovereign authority—by its laws. *Ibid.*

Under the former ruling of this Court, it is well established that the State may, through its proper officer, maintain a bill to enjoin public or municipal corporations from acting in contravention of the Constitution and laws of the State. *State* v. *Saline County Court*, 51 Mo., 350; *State* v. *Callaway County Court*, Id., 395; *State* v. *Sanderson*, 54 Mo., 203; *Ranney* v. *Bader*, 67 Mo., 476; 2 High, Inj., §§ 1282, 1304.

In the case at bar, there was ample ground for the interposition of the prosecuting attorney, in his endeavors to keep the judges of the County Court and other officers within the confines of their legitimate authority. Nor do I see that the matter being discussed is at all affected because the action of the County Court was produced by the mandate of the Federal Court. If, as already seen, the County Court was powerless to act, except when acting in conformity to express statutory conditions, it was still the duty of the judges to comply with those conditions while yielding obedience to the mandate aforesaid; for, outside of those statutory conditions, they were utterly powerless to act. Indeed, under § 6800, they were punishable for a misdemeanor in failing to comply with the provisions of § 6799 before levying the tax. It does not stand to reason that their act could be valid, and still at the same time punishable as a crime. *State* v. *Garroutte*, 67 Mo., 456.

If the statutory provisions being discussed were of such a nature as to cut off those who obtained the judgments from enforcing the obligations held by them, then the authorities cited on their behalf might apply. I understand that it is within the power of the State to change the remedy so long as it does not essentially affect the right embodied in the contract; and that such change, thus made, does not infract the rule that forbids the contract to be impaired.

In this connection, the language used by Mr. Justice Swayne is apposite to this case: "It is competent for the States to change the form of the remedy, or to modify it otherwise as they may see fit, provided no substantial right secured by the contract is thereby impaired. No attempt has been made to fix definitely the line between the alterations of the remedy, which are to be deemed legitimate, and those which, under the form of modifying the remedy, impair substantial rights. Every case must be determined upon its own circumstances." *Von Hoffman*

v. *Quincy*, 4 Wall., 535 [71 U. S., bk. 18, L. ed. 403.] See also *Ogden* v. *Saunders*, 12 Wheat. 213 [25 U. S., bk. 6, L. ed. 606]; Cooley, Const. Lim., 5th ed., 348, 349; Id., 710, *et seq.*

The point has not been made in this court, nor was it in the court below, as to any defect of parties. I am inclined to the opinion, however, that, as this proceeding did not deny the legality of the tax, but only the mere method of its collection, and as it was but a proceeding on the part of the State, through its prosecuting officer, to restrain the county officials within the bounds of their legitimate authority, that other parties were not necessary.

I think a distinction may well be taken between a proceeding which looks to the absolute denial of a right, and one which merely seeks to prohibit or restrain the enforcement of that right in an unlawful way.

All concur; NORTON, *Ch. J.*, absent.

Respectfully submitted:

E. JOHN ELLIS,
JOHN JOHNS,
D. A. McKNIGHT,
Attorneys for Plaintiff in Error.

22-284

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 299.

J. M. SEIBERT, Collector of Cape Girardeau County, Plaintiff in Error,

vs.

THE UNITED STATES, Ex. Rel. Jas. M. Lewis, Adm'r of Elisha Foote.

STATEMENT AND BRIEF FOR DEFENDANT IN ERROR.

J. B. Henderson,
James M. Lewis,
Attorneys.

Judd & Detweiler, Printers.

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All concur; NORTON, *Ch. J.*, absent.

Respectfully submitted:

E. JOHN ELLIS,
JOHN JOHNS,
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Attorneys for Plaintiff in Error.

122-284

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 299.

J. M. SEIBERT, Collector of Cape Girardeau County, Plaintiff in Error,

vs.

THE UNITED STATES, Ex. Rel. Jas. M. Lewis, Adm'r of Elisha Foote.

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OCTOBER TERM, 1886.

No. 299.

J. M. SEIBERT, Collector of Cape Girardeau County, Plaintiff in Error,

vs.

THE UNITED STATES, Ex. Rel. Jas. M. Lewis, Adm'r of Elisha Foote.

ERROR FROM CIRCUIT COURT OF THE UNITED STATES FOR EASTERN DISTRICT OF MISSOURI.

Statement.

Prior to 1883 five parties plaintiff, including the respondent, but each for himself, had obtained five several judgments against Cape Girardeau county in the circuit court of the United States for the eastern district of Missouri. The judgments were founded on coupons detached from bonds known in Missouri as township railroad bonds, issued for Cape Girardeau township, in said county, under the act of March 23, 1868. (Session Acts 1867–'8, p. 92.)

These judgment plaintiffs having duly prosecuted their

respective writs of *mandamus* to collect their judgments, the county court of said county, in obedience to the commands thereof, at the regular May term, 1883, of said county court, the term at which the State and county taxes are by law assessed for each year, made and entered of record an order reciting the existence of these five judgments in the United States circuit court and the issuance and service upon them of the alternative and peremptory writs of *mandamus*, and thereupon levying a tax of two per cent. on the real estate and personal property within the township, including the statements of merchants, for the purpose of paying these judgments.

This tax, as directed by the county court, was entered in a separate column on the regular tax-book of the county for the year 1883, and this book was, as required by law, placed in the hands of Seibert, the county collector, who is the plaintiff in error here, with the usual order to collect all the taxes extended thereon.

Thereupon the county attorney of Cape Girardeau county, one Maurice Cramer, under a proceeding authorized by statute, filed in the circuit court of the State a proceeding in the nature of a bill in chancery against the collector and the judges of the county court, praying that they be enjoined from the collection of this two per cent. tax or any part of it.

There are two grounds alleged in the bill for this interference—*first*, that the county court, before making the levy, neglected to make or cause to be made an application to the State circuit court for Cape Girardeau county, or to the judge thereof, in vacation, for an order of authority to the county court to levy said tax, but that the same had been illegally made by the county court without such authority;

and, *second*, that in the writs of *mandamus* and in the order of the county court, made in pursuance thereof, the tax is directed to be levied on both real *and* personal property in the township, *whereas* the levy could be legally imposed on the real estate alone.

The State judge readily took jurisdiction of this proceeding and ordered a temporary writ restraining the collector and the county court from any further obedience to the Federal court, which on final hearing was promptly made perpetual.

On being notified of the temporary writ the collector refused to proceed further in the collection of the tax.

Thereupon the judgment plaintiffs presented, in March, 1884, to the circuit court of the United States, in which their judgments had been obtained, an information reciting these facts. After charging the action of the State court to have been without authority and an unwarrantable interference with the jurisdiction of the Federal court, and that the collector had positively refused to take any further steps to collect the tax as ordered, they prayed an order against the collector commanding him to proceed at once to obey the commands of the county court of Cape Girardeau county and to collect the special tax referred to, or that he show cause for his disobedience; whereupon an alternative writ was ordered against Seibert returnable on June 2, 1884.

On the return of this writ Seibert appeared, by counsel, and, admitting his disobedience, justified the same under the order of injunction issued and served on him by the State ourt. For a further return he set up the act of the Legislature of Missouri passed in March, 1879, making it a criminal offense for him to collect this special tax because it had not been approved and ordered by the State circuit court of the county of Cape Girardeau or the judge thereof.

A demurrer to this return by relator having been sustained, a peremptory writ was by the lower court ordered, commanding Seibert, the collector, to proceed forthwith to collect this special tax as directed by the county court.

It is to reverse this judgment of the circuit court that the writ of error is now prosecuted.

The coupons, on which the judgment in this case is founded, were dated July 1, 1869. The date is stated by plaintiff in error to be 1868; but either date must be followed by the same legal consequences.

They were issued under the township aid act of March 23, 1868, the second section of which, as originally passed, reads as follows:

"In order to meet the payments on account of the subscription to the stock according to its terms, or to pay the interest and principal on any bond which may be issued on account of such subscription, the county court shall, from time to time, levy and cause to be collected, in the same manner as county taxes, a special tax, which shall be levied on all the real estate lying and being within the * * * township, * * * making the subscription in accordance with the valuation then last made by the county assessor for county purposes," etc.

Session acts, 1867–'8, p. 93.

This section was amended on March 10, 1871, so as to include personal property and merchants' licenses with the real estate of the township in the property to be assessed for paying the bonds and coupons. The act thus amended then read as follows: "The county court shall, from time to time, levy and cause to be collected, in the same manner as county taxes, a special tax, which shall be levied on all the real estate and personal property, including all statements of merchants doing business within said * * * township

* * * lying and being within the township making the subscription in accordance with the valuation then last made by the county assessor for county purposes," etc.

1 Wagner's Statutes, p. 313, § 52.

At all times previous to March 8, 1879, all State and county taxes were required by law to be levied exclusively by the county courts. Neither the circuit courts, the judges thereof, nor other tribunal or officers were invested with any control or supervision of any description over the county courts in the making of tax levies. The county assessors were required to examine the property within the county and before a given day return to the county clerk a full valuation thereof, on which, after correction by a board of appeals, the county court, without limitation or control by other power, was required to levy for State purposes the percentages fixed by law, and for county purposes a sum sufficient, in their discretion, not exceeding the legal limit fixed by law, to meet the requirements of the county for the year.

See Wagner's General Statutes, title "Revenue."

Also, United States, &c., *vs.* Johnson County, 5 Dillon, 208, where this whole subject is carefully examined.

Such was the law of Missouri when the bonds and coupons of Cape Girardeau township were issued and sold, and such the law remained till March 8, 1879. On the day last named an act was passed as follows:

"SEC. 1. The following-named taxes shall be levied and collected in the several counties in this State, and only in the manner, and not to exceed the rates prescribed by the constitution and laws of this State, viz., the State tax and the tax necessary to pay the funded or bonded debt of the

State, the tax for the current county expenditures, and for schools.

"SEC. 2. No other tax for any purpose shall be assessed, levied, or collected, except under the following limitations and conditions, to wit, the prosecuting attorney or county attorney, upon the request of the county court of such county, which request shall be of record with the proceedings of said court, and such court being first satisfied that there exists a necessity for the assessment, levy, and collection of other taxes than those enumerated and specified in the preceding section, shall present a petition to the circuit court of his county, or to the judge thereof, in vacation, setting forth the facts and specifying the reasons why such other tax or taxes should be assesed, levied, and collected; and such circuit court, or judge thereof, upon being satisfied of the necessity for such tax or taxes, and that the assessment, levy, and collection thereof will not be in conflict with the constitution and laws of this State, shall make an order, directed to the county court of such county, commanding such court to have assessed, levied, and collected such other tax or taxes, and shall enforce such order by mandamus or otherwise."

Sections 3 and 4 pronounce county judges and other officials guilty of misdemeanor who shall collect or order the collection of such taxes without the previous direction of the circuit court, or the judge thereof, and affix the penalties.

See 2 Rev. Stat., 1879, §§ 6798 to 6802, inclusive.

This statement of the case shows that the judgment of the circuit court should be affirmed.

POINTS AND AUTHORITIES.

I.

First. The relator, as a matter of right, is entitled to a writ of *mandamus* subjecting both real and personal property to the payment of his judgment. The amendatory act

was not repealed till March 24, 1885. The judgment was obtained during its existence as a law.

Cape Girardeau Co. Court *vs.* Hill, 118 U. S., 68.
U. S. *Ex Rel. vs.* Johnson Co. Ct., 5 Dillon, 208.

Second. But whether the relator be entitled to the writ against personal as well as real estate is a question now conclusively settled by the judgment on the coupons in the court below. It is too late to review said judgment. The writs of *mandamus* followed the judgment. The writs were served and the tax ordered by the county court in pursuance of their commands. The Federal court had full jurisdiction of the persons and the subject-matter involved in the original suit, and also in the proceedings to obtain the writs of *mandamus*. The circuit court of the United States had the right when it ordered the *mandamus* to determine what property under the laws of Missouri was subject to the payment of relator's claim. That determination could only be reviewed by writ of error from this court. That review was had in Hill's case, already cited (118 U. S., 68). Seibert has no right to raise the question again, either directly or indirectly.

Wayman *vs.* Southard, 10 Wheat., 1.
Peck *vs.* Jenness, 7 How., 612,
Bank *vs.* Halstead, 10 Wheat., 56.

In Riggs *vs.* Johnson County, 6 Wall., 194, this Court said:

"Regularity of the proceedings in the primary suit are not open to inquiry, and it is conceded that the judgment was in regular form; and, if so, then the power of the circuit court to issue final process agreeably to the principles and usages of law to enforce the judgment is undeniable."

Third. The State courts cannot interfere by injunction to defeat the writs of the Federal courts or to restrain State officers from the performance of ministerial duties enjoined on them in pursuance of and in obedience to such writs.

Riggs *vs.* Johnson County, 6 Wall., 166.

State *ex rel.* Wilson *vs.* Rainey, 74 Mo., 229 (1881).

In the former case this Court held that—

"The authority of the circuit courts to issue process of any kind which is necessary to the exercise of its jurisdiction and agreeable to the principles and usages of law is beyond question and the power so conferred cannot be controlled either by the process of the State courts or by any act of a State Legislature."

See McKim *vs.* Voorhees, 7 Cranch, p. 279.

U. S. *vs.* Peters, 5 Cranch, 136.

Slocum *vs.* Mayberry, 2 Wheat., 9.

Beers *vs.* Haughton, 9 Peters, 359.

Ableman *vs.* Boothe, 21 How., 516.

Peck *vs.* Jenness, 7 How., 625.

The supreme court of Missouri in the case above cited from 74 Mo. R. held—

First. That when the county court levies a tax in obedience to a writ of *mandamus* from a Federal court the State courts cannot interfere on the ground that the bonds on which the judgment was obtained are void, the judgment being held as conclusive.

Second. That a judgment against a county is binding on all the tax-payers of the county.

Third. That the State courts will respect and hold as valid the judgments of the Federal courts against a municipality

on its bonds, notwithstanding the fact that the State courts regard the bonds themselves as void; and

Fourth. That when the Legislature has clothed a municipal corporation with the right to levy taxes to pay debts, any court having jurisdiction to enforce payment of a judgment for a part of said debt may by *mandamus* compel the corporate authorities to levy a tax in conformity with the mode prescribed and to the power conferred by law.

This is a late case and one arising under circumstances similar to those in this case.

See U. S. *vs.* Silverman, 4 Dillon, 224.

II.

The next error alleged involved the validity of the act of the Missouri Legislature, approved March 8, 1879.

As already stated, when the bonds were issued in 1869, and for the ten years following, the exclusive power and duty to levy taxes for State and county purposes were vested in the county courts. Neither the circuit courts nor the judges thereof were ever intrusted with any authority or duty, judicial or ministerial, touching this question until the act of 1879. In addition to this, the township aid act of 1868, under which the coupons involved were issued, specially provided that the county courts "*shall*, from time to time, levy and cause to be collected in the same manner as county taxes, a special tax" to pay these bonds and interest.

This provision, therefore, became a part of the contract between the municipality and the purchasers of the bonds. If, therefore, the act of 1879 was intended to apply to the taxation necessary to pay these bonds it is clearly void. In

cases where acts so change the nature and extent of remedies as materially to impair the rights or interests of the owner, they are void.

One of the tests is that the value of a contract or the facility of its enforcement is by the act diminished. The settled doctrine is that the laws which subsist at the time and place of making a contract enter into and form a part of it; and the rule embraces all acts that affect the validity, the construction, the enforcement or discharge of the contract. As was said by this Court in Edwards *vs.* Kearzey, 96 U. S., 607:

"Any subsequent law of a State which so affects the remedy as substantially to impair and lessen the value of the contract is forbidden by the Constitution."

Von Hoffman *vs.* Quincy, 4 Wall., 535.
Planters' Bank *vs.* Sharp, 6 How., 301.
Green *vs.* Biddle, 8 Wheat., 1.

The act of 1868, under which the bonds were issued, declares that the county court *shall* levy the tax to pay them. The act of 1879 declares that the county court shall *not* levy any tax to pay the principal or interest of a bonded debt—in other words, no tax whatever except the State tax, the tax for schools, and current county expenditures, unless previously so ordered by the circuit court or the judge thereof, and this authority must be obtained on motion of the county attorney, made at the instance of the county court; and before the county court shall prefer such request to the county attorney, it (the county court) must be satisfied that "there exists a necessity for the assessment, levy, and collection" of the tax.

Thus a ministerial duty, imperative in its character, entering into and becoming a part of the contract made in 1869, is here attempted to be converted in 1879 into a judicial discretion. Not only is a new tribunal (the circuit court) placed between the creditor and the enforcement of his contract, but that tribunal is invested with discretionary powers and subjected to limitations calculated, and, I may say, intended, to deprive the creditor of all remedy on his contract. It is provided in the act that before the circuit judge or court shall grant his permission to the county court to do what the contract absolutely commands the county court to do, "such judge or court shall be satisfied of the necessity for such tax, and that the assessment, levy and collection thereof will not be in conflict with the constitution and laws of this State" (Missouri).

If I were to add—which, perhaps, I should refrain from doing—that this legislation was enacted at a time when more than one-half of all the bonds issued by municipalities in the State had been declared void by the State courts, and at a time, too, when the undead memories of State sovereignty still enjoined that the State constitution and the laws made in pursuance thereof should be the supreme law of the land, and that all State officers should be bound thereby, anything in the Federal Constitution to the contrary notwithstanding, we might the better determine whether the act of 1879 would impair the obligation of relator's contract.

The ink was scarcely dry after the enrollment of this act before it was pleaded in the circuit court of the United States before Judges Dillon and Krekel, in a case similar to this, when it was promptly set aside as an infringement of the Federal Constitution. That court, in an able opinion pre-

pared by Judge Krekel and concurred in by Judge Dillon, said "the conclusions arrived at is that the act of March 23, 1868, points out a plain, unmistakable duty to be performed by the county court, without let, hindrance, or supervision of the circuit courts of the State; that the act of March 8th, 1879, deprives the county court of this power and transfers it to the circuit court or judge thereof, who is to act under limitations seriously affecting, if not altogether depriving, relator of his rights. This so impairs his remedy given by the act under which the bonds were issued as to substantially lessen the value and efficiency thereof."

U. S. *ex rel. vs.* Johnson County, 5 Dillon, 208.

In the case of U. S. *ex rel. vs.* Lincoln County, 5 Dillon, 184, in an opinion prepared by Judge Dillon and concurred in by Judge Treat, it is said that "the act of March 8, 1879, known as the 'Cottey act,' if applicable to such judgments, is, as to bonds issued prior thereto, in conflict with the provision of the Constitution of the United States which prohibits the States from impairing the obligation of contracts."

After these decisions, made in 1879, directly on the point involved, the question was considered settled and put forever at rest until it was revived in this case and used as a means of staying the collection of relator's judgment for three or four years.

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Attorney for Defendant.

NOTE.—It has been stated in argument here that the supreme court of Missouri has, in a late and unpublished opinion, affirmed the judgment of the State circuit court by

which Seibert was enjoined from collecting this tax. It is *almost* impossible that such a decision could have been reached by that court in the face of its recent ruling as reported in 74th of Missouri. But if so, it is *quite* impossible that this Court should accept it as the law of this case in the face of its repeated rulings from McKim *vs.* Voorhees, in 7th of Cranch, and Riggs *vs.* Johnson, in 6th of Wall., down to the present date.

J. B. HENDERSON,
Attorney.